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rank-ordered by the date of receipt of the request.

(c) A requester whose request does not qualify for the fastest track may be given an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) ARS shall process requests in each track on a "first-in, first-out" basis, unless there are unusual circumstances as set forth in §1.16 of this title, or the requester is entitled to expedited processing as set forth in §1.9 of this title.

### §510.5 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with §1.7(a) of this title.

### §510.6 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with §1.14 of this title and should be addressed as follows: Administrator, ARS, U.S. Department of Agriculture, Washington, DC 20250.

## PART 520—PROCEDURES FOR IMPLEMENTING NATIONAL ENVIRONMENTAL POLICY ACT

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AUTHORITY: National Environmental Policy Act (NEPA) as amended, 42 U.S.C. 4321 *et seq.*; E.O. 11514, 34 FR 4247, as amended by E.O. 11991, 42 FR 26927; E.O. 12144, 44 FR 11957; 5 U.S.C. 301; 40 CFR 1500-1508.

SOURCE: 51 FR 34191, Sept. 25, 1986, unless otherwise noted.

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### §520.1 General statement.

These procedures assure that research and other activities of the Agricultural Research Service (ARS) comply with the intent of the National Environmental Policy Act of 1969 (NEPA) and appropriate regulations implementing this Act. These procedures incorporate and supplement, and are not a substitute for, CEQ regulations under 40 CFR parts 1500-1508, and Department of Agriculture NEPA Policies and Procedures under 7 CFR part 1b. ARS conducts and supports research as authorized by legislation to support one of the USDA goals of assuring adequate supplies of high quality food and fiber. Information generated through such research often forms the basic data needed to assess the impact of a new technology upon the environment. Large scale projects simulating commercial practices are normally implemented in cooperation with other agencies of the Federal or State Governments.

### §520.2 Definition.

*Control Agents* mean biological material or chemicals which are intended to enhance the production efficiency of an agricultural crop or animal such as through elimination of a pest.

### §520.3 Policy.

(a) It is ARS policy to comply with the provisions of NEPA and related laws and policies.

(b) Environmental documents should be concise, written in plain language, and address the issues pertinent to the decision being made.

(c) Environmental documents may be substituted or combined with other reports which serve to facilitate decisionmaking.

(d) Costs of analyses and environmental documents are to be planned for during the budgetary process for the plan, program, or project. Special provisions for financing NEPA process activities which are unanticipated and extraordinary may be made in the Office of the Administrator of ARS.

(e) ARS personnel will cooperate with other agencies, States, contractors, or other entities proposing to undertake activities involving the ARS to assure that NEPA considerations are

addressed early in the planning process to avoid delays and conflicts as required by 40 CFR 1501.2.

(f) For some activities, project participants outside ARS may be required to provide data and documentation. When an applicant or contractor prepares an environmental assessment (EA) or a contractor prepares an environmental impact statement (EIS), the activities shall be carried out according to 40 CFR 1506.5.

(g) Environmental documents, decision notices, and records of decision must be made available for review by the public. There shall be an early and open process for determining the scope of issues to be addressed in the environmental analysis process (40 CFR 1501.7).

(h) The concepts of tiering to eliminate repetitive discussions applicable to EIS's (40 CFR Part 1502) are also applicable to EA's.

(i) ARS personnel may adopt an existing EA or EIS when a proposed action is substantially the same as the action for which the existing EA or EIS was prepared (40 CFR 1506.3 (b)).

(j) ARS personnel may incorporate by reference any existing documents in order to reduce the bulk of an EA or EIS (40 CFR 1502.21).

(k) After prior consultation with the Council on Environmental Quality, ARS personnel may forego preparation of an EA or EIS in emergency situations (40 CFR 1506.11).

#### § 520.4 Responsibilities.

(a) *Administrator.* The Administrator is responsible for environmental analysis and documentation required for compliance with the provisions of NEPA and related laws, policies, plans, programs, and projects. The ARS Assistant Administrator for Cooperative Interactions has been delegated responsibility for the establishment of procedures and coordination necessary to carry out the policies and provisions of NEPA.

(b) *Deputy Administrators and Area Directors.* The Deputy Administrators and Area Directors are responsible to the Administrator for assuring that ARS programs are in compliance with the policies and procedures of NEPA.

#### § 520.5 Categorical exclusions.

For the following categories of actions, the preparation of an EA or EIS is not required:

(a) *Department of Agriculture categorical exclusions (7 CFR 1b.3).*

(1) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes or similar administrative functions;

(2) Activities which deal solely with the functions of programs, such as program budget proposals, disbursement, transfer or reprogramming of funds;

(3) Inventories, research activities and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(4) Educational and information programs and activities;

(5) Activities which are advisory and consultative to other agencies, public and private entities, and

(6) Activities related to trade representation and market development activities overseas.

(b) *ARS categorical exclusions.* ARS actions which, based on previous experience, have been found to have limited scope and intensity and produce little or no individual or cumulative impacts to the human environment. Some examples are:

(1) Repair, replacement of structural components or equipment, or other routine maintenance of facilities controlled in whole or in part by ARS;

(2) Research programs or projects of limited size and magnitude or with only short-term effects on the environment. Examples are:

(i) Research operations conducted within any laboratory, greenhouse or other contained facility where research practices and safeguards prevent environment impacts such as the release of hazardous materials into the environment;

(ii) Inventories, studies or other such activities that have limited context and minimal intensity in terms of changes in the environment;

(iii) Testing outside of the laboratory, such as in small isolated field plots, which does not involve the use of control agents requiring containment

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or a special license or a permit from a regulatory agency.

(c) *Exceptions to categorical exclusions.* An environmental assessment shall be prepared for an activity which is normally within the purview of categorical exclusion if there are extraordinary circumstances which may cause such activity to have a significant environmental effect.

## § 520.6 Preparation of an Environmental Assessment (EA).

(a) *Actions requiring EA.* The following actions would normally require an EA:

(1) Programs, supported in the majority by ARS, which may assist in the transition of a particular technology from field evaluation stage to large-scale demonstration or simulated commercial phase;

(2) Field work having an impact on the local environment such as earth excavation, explosives, weather modifications, or other such techniques; and

(3) The testing outside the laboratory, such as small isolated field plots, of control agents which require containment precautions or either a special license or a permit from a regulatory agency.

(b) *Multiple agencies actions.* If more than one Federal agency participates in a program activity, the EA shall be prepared by the lead agency as provided in 40 CFR 1501.5.

(c) *Format and conclusion.* An EA can be in any format provided it covers in a logical and succinct fashion the information necessary for determining whether a proposed Federal action may have a significant environmental impact and thus warrant preparation of an EIS. The EA will contain the information required by 40 CFR 1508.9. This information will include brief discussions of the need for the project or other proposal, alternatives, environmental impacts of the proposed action and alternatives and a listing of agencies and persons consulted.

(d) *Decision notice.* Upon completion of an EA, the responsible official will

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consider the information it contains, decide whether an EIS is required or that no significant environmental impact will occur, and will document the decision and the reasons for it. The decision and the EA shall be available to the public in a manner appropriate to the situation. If there is a finding of no significant impact, the EA may be combined with the decision notice.

## § 520.7 Preparation of an Environmental Impact Statement (EIS).

(a) *Actions requiring EIS.* An EIS will normally be prepared for:

(1) Proposals for legislation which are determined to be a major Federal action significantly affecting the quality of the human environment; or,

(2) Other major Federal actions significantly affecting the quality of the human environment. In the experience of ARS, an environmental impact statement shall normally be required in situations when a research project has advanced beyond the laboratory and small plot testing to full scale field testing over a very large area and involving the introduction of control agents.

(b) *Notice of intent.* If the responsible official recommends the preparation of an EIS, then the public shall be apprised of the decision. This notice shall be prepared according to 40 CFR 1508.22.

(c) *Draft and final EIS.* The process of preparing the draft and final EIS, as well as the format, shall be according to 40 CFR parts 1502-1506.

(d) *Decisionmaking and implementation.* The responsible official may make a decision no sooner than thirty days after the notice of availability of the final EIS has been published in the FEDERAL REGISTER by the Environmental Protection Agency (40 CFR 1506.10). The decision will be documented in a Record of Decision required by 40 CFR 1502.2, and monitoring and mitigation activities will be implemented as required by 40 CFR 1505.3.